

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ERNEST COMMUNICATIONS, INC.	DOCKET NOS. TCU-04-16 WRU-04-51-3782
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**ORDER GRANTING APPLICATION, APPROVING CONCURRENCE IN MAPS,
AND GRANTING WAIVER**

(Issued January 21, 2005)

On October 29, 2004, Ernest Communications, Inc. (Ernest), filed an application with the Utilities Board (Board) for issuance of a certificate of public convenience and necessity pursuant to Iowa Code § 476.29 (2003), stating its intention to provide local exchange service in the exchanges currently served by Qwest Corporation (Qwest). The application has been identified as Docket No. TCU-04-16. Ernest has provided financial statements and the qualifications of its company officers and has stated it will support a 2-PIC dialing methodology for dialing parity. No objections to the application were received.

Iowa Code § 476.29(2) provides that a local exchange carrier shall not be denied a certificate if the Board finds that the applicant "possesses the technical, financial, and managerial ability to provide the service it proposes to render and the Board finds the service is consistent with the public interest."

The Board has reviewed Ernest's application and finds the necessary technical, financial, and managerial ability to provide local exchange service has

been demonstrated. Ernest has also filed a statement indicating that it commits to utilizing thousand-block number pooling (TBNP), even in areas where TBNP is voluntary, to the extent it is technically feasible to do so.

Ernest also states that its service area will mirror the exchanges and service area maps of Qwest as they are currently filed and may be modified in the future. Iowa Code § 476.29(4) requires that each certificate define the service territory in which landline local telephone service will be provided and authorizes the Board to promulgate rules establishing the requirements for filing maps showing the service territory. Subrule 199 IAC 22.20(3) requires that all utilities have maps on file with the Board that show exchange boundaries. The Board finds that Ernest has complied with the statutory and rule requirements by concurring in the exchange maps of Qwest.

Ernest requests the Board waive the requirements of 199 IAC 16.5(2), 18.2, and 22.3(1). The waiver request has been identified as Docket No. WRU-04-51-3782.

Ernest requests a waiver of 199 IAC 16.5(2), which requires the keeping of records according to the uniform system of accounts. Ernest states it will maintain its books in accordance with generally accepted accounting principles (GAAP). The Board finds this waiver should be granted, since records kept in accordance with GAAP accounting are acceptable for a competitive local exchange service provider.

Ernest also requested the requirements of 199 IAC 18.2 be waived. The rule requires that a regulated public utility keep its records in Iowa. The Board will grant

the waiver based on Ernest's statement that it will make the records available to the Board upon request.

Ernest also requested a waiver of 199 IAC 22.3(1), requiring it to independently publish a directory. The Board will grant this waiver based upon Ernest's statement that it will arrange for its customers to be included in the directories published in the areas it provides local exchange service.

Rule 199 IAC 1.3 states that the Board may grant waivers if it finds, based upon clear and convincing evidence, that the application of the rule would pose an undue hardship, the waiver would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver requests as described above and finds that the waiver meets the four criteria of the rule and the evidence in support of the waiver is clear and convincing.

Adherence to these rules would be an undue hardship on a competitive telecommunications company just beginning to do business in Iowa. It would be an undue hardship on Ernest because other competitive carriers have been granted similar waiver requests. The Board finds there are no substantial legal rights of any person that are affected by these waivers and there is no statute that specifically mandates the actions waived. Additionally, the Board finds that there will be substantially equal protection for the public health, safety, and welfare provided since the actions waived will be completed under different circumstances.

IT IS THEREFORE ORDERED:

1. The application for a certificate of public convenience and necessity filed by Ernest Communications, Inc., on October 29, 2004, is granted.
2. The concurrence in the maps and boundaries of the exchanges of Qwest Corporation is approved.
3. The waiver of 199 IAC 16.5(2), 18.2, and 22.3(1), identified as Docket No. WRU-04-51-3782, is granted as described in this order.
4. The Board will issue a certificate of public convenience and necessity allowing Ernest Communications, Inc., to provide local exchange service upon approval of a tariff reflecting the prices, terms, and conditions of its local exchange service in Iowa.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 21st day of January, 2005.